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Supreme Court, U.S.
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No. 95-1441

In The

Supreme Court of the United States

October Term, 1995

LINDA J. BLESSING, Director,
Arizona Department of Economic Security,
in her official capacity,

Petitioner,

v.

CATHY FREESTONE, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

JOINT APPENDIX

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TABLE OF CONTENTS

Page

Relevant Docket Entries from the United States District Court for the District of Arizona 1

Relevant Docket Entries from the United States Court of Appeals for the Ninth Circuit 3

Complaint 5

Answer 127

RELEVANT DOCKET ENTRIES

DISTRICT COURT DOCKET ENTRIES

Proceedings include all events.
1:93cv100 Freestone, et al v. Cowan

2/22/93	1	COMPLAINT FILED AND NO SUMMONS ISSUED (br)
4/28/93	6	MOTION dismiss plas' cmp by dft [6-1] (caf) [Entry date 04/29/93]
4/28/93	7	EXHIBITS (Re: [6-1] (caf) [Entry date 04/29/93]
6/8/93	14	OPPOSITION by plas to mtn dismiss plas' cmp by dft [6-1] (bee) [Entry date 06/14/93]
6/28/93	18	REPLY by dft (caf) [Entry date 06/29/93]
8/12/93	21	ORDER by Judge Alfredo C. Marquez that dfts mtn for sumjgm is granted and that jgm be entered. (n1) [Entry date 08/13/93]
8/13/93	22	JUDGMENT: by Judge Alfredo C. Marquez that dfts mtn for sumjgm is granted; jgm entered in favor of dft and agnst the pla. terminating case (cc: all counsel) (nl)
8/30/93	23	NOTICE OF APPEAL by Cathy Freestone, Susan Harrington, Sonya Madrid, Judith Rogers, Esperanza Laustaunau from District Court [22-2] (cc: 9CCA/All Counsel) (as) [Entry date 09/07/93]
12/26/95	24	CERTIFIED COPY of 9CCA Mandate re reversing and remanding the decision of the District Court [Appeal [23-1] (cc: all counsel) (kt) [Entry date 01/08/96]

1/22/96	27	MINUTE ENTRY Judge Inits: ACM Crt Rptr: R.Bodimer; Status conf. Mandate suspended. Writ of Certorari [sic] pending. [cc: all counsel] [27-1] re: minute entry [27-1] (rl) [Entry date 01/26/96]
3/7/96	29	ANSWER by dft Charles E Cowan (bee) [Entry date 03/13/96]

9TH CIRCUIT COURT OF APPEALS DOCKET ENTRIES

9/15/93	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): y. setting schedule as follows: CADS due 9/29/93,,; appellant's designation of RT is due 9/9/93,,; appellee's designation of RT is due 9/20/93; appellant shall order transcript by 9/29/93,,; court reporter shall file transcript in DC by 11/1/93; certificate of record shall be filed by 11/8/93; appellant's opening brief is due 12/16/93,,; appellees' brief is due 1/18/94; appellants' reply brief is due 1/31/94,,; [93-16697] (dg)
2/11/94	Filed original and 15 copies Appellants' Cathy Freestone, Susan Harrington, Sonya Madrid, Judith Rogers and Esperanza Laustaunau opening brief (Informal: no) 47 pages and five excerpts record in 1 vol.; served on 12/14/93 [93-16697] (ot)
3/16/94	Filed original and 15 copies Appellee Charles E. Cowan brief, 20 pages, served on 3/14/94 minor defcy: no Statement of Related Cases Notified counsel. appellants' reply brief due 4/4/94; minor brief deficiency response due 3/30/94. record on appeal due 4/4/94; (ot)
3/25/94	Filed original and 15 copies Cathy Freestone, Susan Harrington, Sonya Madrid, Judith Rogers, Esperanza Laustaunau reply brief, (Informal: no) 14 pages; served on 3/24/94 [93-16697] (ot)
4/18/94	Filed certified record on appeal in 01 Vols. (total): 01 Clerks Rec; 0 RTs (ORIG) [93-16697] [93-16697] (ot)

2/17/95 ARGUED AND SUBMITTED TO Stephen R. REINHARDT, David R. THOMPSON & Andrew J. KLEINFELD; CJJ. [93-16697] (jr)

10/12/95 FILED OPINION: REVERSED & REMANDED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Stephen R. REINHARDT, author; David R. THOMPSON; Andrew J. KLEINFELD, dissenting.) FILED AND ENTERED JUDGMENT. [93-16697] (ot)

10/26/95 Filed original and 40 copies Appellee Charles E. Cowan petition for rehearing with suggestion for rehearing en banc 12 p. pages, served on 10/25/95 (PNL/ALL ACTIVE JDGS) (ot)

12/12/95 Filed order (Stephen R. REINHARDT, David R. THOMPSON, Andrew J. KLEINFELD): denying petition for rhrg and the suggestion for enbanc rehearing is rejected. [93-16697] (ot)

12/20/95 MANDATE ISSUED [93-16697] (jr)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

CATHY FREESTONE, SUSAN HARRINGTON, SONYA MADRID, JUDITH ROGERS, and ESPERANZA LAUSTAUNAU, individually, on behalf of their minor children and on behalf of all others similarly situated, Plaintiffs, v. CHARLES E. COWAN, Director, Arizona Department of Economic Security, in his official capacity, Defendant.	No. CIV 93-100 GLO ACM COMPLAINT (For Declaratory and Injunctive Relief) (Filed Feb. 22, 1993)

For their Complaint in the above-entitled action, plaintiffs hereby allege that:

I PRELIMINARY COMPLAINT

1. This is an action for declaratory and injunctive relief alleging that administration of the Arizona state program for collection of child support and provision of various related services required by Title IV-D of the

Social Security Act, 42 U.S.C. §651 *et. seq.*, violates federal law and regulations enforceable by the plaintiffs, on behalf of themselves, their minor children and all others similarly situated, in an action brought pursuant to 42 U.S.C. §1983.

II JURISDICTION

2. For the reasons set forth in paragraphs 82, 84-89 and 143, which plaintiffs incorporate herein, substantive provisions of Title IV-D and its implementing regulations create individual rights that plaintiffs and all members of the proposed class may enforce in an action authorized by 42 U.S.C. §1983.

3. This Court therefore has jurisdiction over the subject matter, pursuant to 28 U.S.C. §§1331(a) and 1343.

III PLAINTIFFS

4. Plaintiff Cathy Freestone is a resident of Thatcher, Arizona, and the custodial parent of minor children, pursuant to a decree of dissolution entered by the Superior Court of Arizona well over a year ago.

5. That decree set forth her former husband's obligations for child support, due and owing monthly, based on his income at the time and on such related factors as the Superior Court then used in making similar determinations.

6. Even though he was employed, plaintiff Freestone's former husband failed to make monthly support payments following entry of their decree of dissolution.

7. Plaintiff Freestone sought assistance from DCSE because she has remained unable to afford the services of private counsel since her divorce.

8. DCSE representatives determined that plaintiff Freestone was entitled to assistance through the State's Title IV-D program; she has remained eligible for and in need of its services since her former husband began flouting his child support obligations more than a year ago.

9. Shortly after she first dealt with DCSE staff, plaintiff Freestone completed all forms they requested of her, as the first step in obtaining a wage assignment order directed to her former husband's employer.

10. Plaintiff Freestone was then told that DCSE would take further action in approximately one month's time, once staff assigned to her case received necessary information from a section of the agency's Phoenix office.

11. When plaintiff Freestone contacted DCSE staff approximately one month later, she was told that the information had not arrived.

12. Plaintiff Freestone volunteered to obtain the missing information herself, did so and provided it to a DCSE representative assigned to her case.

13. DCSE staff later advised plaintiff Freestone that the desired wage assignment order had been filed.

14. In the meantime, however, plaintiffs' former husband had obtained new employment, in which he earned twice the wages paid him at the time the underlying decree of dissolution was entered.

15. Plaintiff Freestone asked that DCSE take action to collect the child support arrearages her former husband still owed, notwithstanding his increase in earnings from an employer not subject to the wage assignment order DCSE finally obtained.

16. DCSE staff informed plaintiff Freestone that they would pursue collection of the arrearages and seek modification of the decree of dissolution, to provide for an increase in her former husband's support obligation commensurate with his present earnings.

17. By the time DCSE finally was prepared to request the aforementioned modification, plaintiff Freestone's former husband had left his high-paying job and returned to more modest employment, in an apparent – and successful – effort to avoid any increase in his monthly support obligation.

18. Although plaintiff Freestone requested an explanation, DCSE caseworkers refused to account for the delay intervening between her former husband's known receipt of a comparatively high-paying job and the agency's completion of a request for modification of the child support obligations in the Freestone divorce decree.

19. In response to her inquiries, DCSE representatives merely noted that the request became pointless, once her former husband abandoned the employment on which it was premised.

20. DCSE staff acting at defendant Cowan's ultimate direction have not taken any timely, effective action, consistent with the specific, concrete requirements of Title IV-D in such cases as plaintiff Freestone presents, to

collect arrearages still owed by her former husband since mid-1991.

21. DCSE caseworkers have obtained a wage assignment order binding on her former husband's current employer, but corresponding support payments to plaintiff Freestone have nonetheless remained irregular.

22. Plaintiff has not received timely, periodic notices from DCSE adequately setting forth current support payments due and disbursed to her; the particular amounts, by month, still owed her since collections under the aforementioned wage assignment became irregular; the causes of such irregularities or the administrative remedies, if any, available to Ms. Freestone.

23. On information and belief, plaintiff Freestone alleges that the omissions on the part of DCSE set forth in preceding paragraphs are largely or wholly attributable to the institutional patterns and practices described in section VI.B. of this Complaint.

24. Plaintiff Susan Harrington is a resident of Apache County and the custodial parent of three minor children, pursuant to a decree of dissolution entered by the Superior Court in 1980.

25. That decree obligated plaintiff Harrington's former husband to pay her $450 per month in child support.

26. In 1980, plaintiff Harrington sought and was determined eligible for Title IV-D services provided by the predecessor to DCSE.

27. Plaintiff Harrington then requested that the States' Title IV-D agency undertake enforcement of the aforementioned child support order, which her former

husband had refused or failed to obey since entry of the underlying decree of dissolution.

28. Plaintiff Harrington has remained qualified for Title IV-D services since she initially requested them, and has tried to cooperate with DCSE as well as its predecessor throughout more than a decade.

29. Between 1980 and 1988, plaintiff Harrington thus completed an agency questionnaire, totalling thirty-seven pages, on three separate occasions, once DCSE staff informed her that the agency had lost her case file.

30. Prior to March of 1990, plaintiff Harrington twice located her former husband after DCSE's parent locator staff proved unwilling or unable to do so, and promptly notified the agency of his whereabouts.

31. On each of those occasions, plaintiff Harrington's former husband succeeded in relocating before DCSE representatives were prepared to take action to enforce his support obligations.

32. On information and belief, plaintiff Harrington alleges that her former husband then knew of DCSE's involvement in her case and enjoyed ample opportunity to conceal himself, thanks to the agency's inordinate delays in initiating enforcement or collection action.

33. In March of 1990, plaintiff Harrington again located her former husband and promptly reported his whereabouts to DCSE staff.

34. DCSE representatives did not attempt to contact her former husband until January, 1991, by which time he had relocated and obtained new employment at places unknown to plaintiff Harrington and the state agency.

35. As of July 1, 1989, plaintiff Harrington's former husband owed child support arrearages of $22,340.30, according to DCSE calculations.

36. Since that time, plaintiff has received two monthly support payments from her former husband, with the assistance of DCSE.

37. On information and belief, plaintiff Harrington alleges that at all times since entry of her divorce decree in 1980, her former husband has lived and held gainful employment in Arizona.

38. DCSE staff acting at the direction of defendant Cowan and his predecessors in office have not taken timely, effective action, consistent with the specific, concrete requirements of Title IV-D in such cases as plaintiff Harrington presents, to locate her former husband; enforce the child support provisions of her decree of dissolution; collect monthly installments thus due her; recover arrearages totalling well over $20,000; or otherwise discharge federally imposed duties owed her, as an ultimate, intended beneficiary of the State's Title IV-D program.

39. On information and belief, plaintiff Harrington alleges that the aforementioned omissions are largely or wholly attributable to extraordinary staff shortages, inordinately high caseloads and unmanageable backlogs besetting all DCSE sections responsible for direct client services, including staff assigned to provide Apache County residents with services required by single parents in Ms. Harrington's circumstances.

40. Plaintiff Sonya Madrid is a resident of Apache county and the custodial parent of four minor children, pursuant to a decree of dissolution entered by the Superior Court on October 9, 1983.

41. That decree obligated plaintiff Madrid's former husband to pay child support monthly, which he has declined or failed to do voluntarily since their divorce.

42. Plaintiff Madrid and her children have received AFDC since 1984, save for a few brief periods in which she held the only gainful employment that she could maintain, as a single parent of four children living in an isolated, rural area.

43. Since 1985, plaintiff Madrid's former husband has lived at various addresses in Leavenworth, Kansas, where he has generally retained employment.

44. Plaintiff Madrid has consistently cooperated with DCSE staff, as required to maintain eligibility for AFDC.

45. Over the last several years, plaintiff Madrid has furnished DCSE with four new addresses for her former husband, in an effort to further collection of child support he owes under their 1983 divorce decree.

46. While plaintiff Madrid's household receives AFDC, her right to such child support remains subject to an assignment in favor of the State of Arizona.

47. Pursuant to Title IV-D, plaintiff Madrid is nonetheless entitled to the first fifty dollars in child support DCSE recovers in a current month and to a portion of any arrearages the agency may collect from time to time.

48. Plaintiff Madrid has never received a fifty-dollar pass-through payment from DCSE, although she alleges on information and belief that the agency has managed to collect enough in current support to entitle her to some such disbursements.

49. From January of 1985 through March of 1991, plaintiff Madrid did not receive any notification from DCSE concerning its collection of child support on her behalf, whether in or for any given month or otherwise; the agency's disbursement(s) of those funds; its recovery of arrearages and disposition of the money; Ms. Madrid's remedies with regard to any such action or omission; or other subjects of a similar nature.

50. In March of 1991, Plaintiff Madrid was sent a DCSE computer printout indicating that the agency had not collected any support in her case during the preceding twelve months.

51. DCSE staff now acting at defendant Cowan's ultimate direction have not taken any timely, effective action, consistent with the specific, concrete requirements of Title IV-D in such cases as plaintiff Madrid presents, to locate her former husband, as necessary; secure enforcement of the child support obligations in the Arizona divorce decree; collect current payments thus owed by her husband; recover arrearages accrued over an unknown number of years since entry of the decree; give Ms. Madrid timely, periodic and adequate notice of collections and disbursements on her account; or otherwise discharge federally imposed duties owed her, as an ultimate, intended beneficiary of the State's Title IV-D program.

52. On information and belief, plaintiff Madrid alleges that the aforementioned omissions are largely or wholly attributable to extraordinary staff shortages, inordinately high caseloads and unmanageable backlogs besetting all DCSE sections responsible for direct client services as well as related accounting functions, including staff assigned to provide Apache County residents with services required by single parents in Ms. Madrid's particular circumstances.

53. Plaintiff Judith Rogers is also a resident of Apache County and the custodial parent of a minor child who will reach majority in the Spring of next year.

54. Plaintiff Rogers knows the identity and whereabouts of the child's father, who has informally acknowledged paternity on more than one occasion and whose name appears on the minor's birth certificate.

55. Paternity, however, has not been formally established.

56. In 1980, plaintiff Rogers applied for and was deemed entitled to services from the State's Title IV-D program, including all services necessary to establish paternity as a matter of law, in the absence of which Ms. Roger's child cannot obtain support or other assistance due him as the offspring of his absent father.

57. On three occasions after 1980, plaintiff Rogers was forced to reapply for DCSE services, because the agency lost her entire case file.

58. Each reapplication required plaintiff Rogers to complete a thirty-seven page questionnaire, even though

her material circumstances had not changed and no intervening event affected her entitlement to Title IV-D services.

59. Throughout the last several years, plaintiff Rogers' son has remained without social security benefits payable on his father's account, which he has urgently needed, given his mother's minimal earnings, and for which he has otherwise qualified, because he cannot demonstrate eligibility until paternity is formally established.

60. DCSE staff now acting at defendant Cowan's ultimate direction have not taken any timely, effective action, consistent with the specific, concrete requirements of Title IV-D in such cases as plaintiff Rogers presents, to bring about a formal determination of her son's paternity and thus discharge federally imposed duties owed Ms. Rogers and her child, as ultimate, intended beneficiaries of the State's Title IV-D program.

61. Such protracted inaction has persisted in the Rogers case because the single largest backlog of DCSE cases exists in the section(s) responsible for services and activities comprising the so-called paternity function.

62. Plaintiff Esperanza Laustaunau is a resident of Santa Cruz County and the custodial parent of a minor child, pursuant to a decree of dissolution entered approximately ten years ago.

63. That decree obligates plaintiff Laustaunau's former husband to provide her with child support in the sum of $175 per month.

64. Beginning in the Summer of 1992, plaintiff's former husband stopped making monthly support payments through DCSE, even though he still maintained his own business and supplemented his income from it through part-time employment with a produce company in the Nogales area.

65. DCSE staff knew or should have known of her former husband's termination of support payments processed through the agency's new automated system, commonly referred to by the acronym "ATLAS".

66. DCSE representatives did not, however, initiate enforcement or collection action in response to a cessation in monthly payments that have not resumed since at least August, 1992.

67. Plaintiff Laustaunau was advised by court personnel to contact the DCSE legal assistance department, and repeatedly attempted, without success, to do so.

68. In November of 1992, plaintiff Laustaunau finally succeeded in reaching an Assistant Attorney General assigned to support enforcement.

69. He then informed plaintiff Laustaunau that action might not be taken in her case because her former husband had charged DCSE with previously collecting amounts in excess of the support he then owed.

70. On information and belief, plaintiffs allege that due to deficiencies in its accounting methods and recordkeeping, DCSE does persist in excessive collections in some cases, without properly adjusting overpayments or taking other action to avoid retaliation from absent

parents thereafter refusing to discharge obligations as they come due.

71. Plaintiff Laustaunau, however, advised the Assistant Attorney General with whom she spoke that she had no notice or indication of any overpayment in her case, and asked when enforcement or collection action, as appropriate, would be initiated on her behalf.

72. She was told that Assistant Attorneys General working with DCSE have "thousands" of cases assigned them and cannot act in any given one by a specified time.

73. Legal staff in the Office of the Attorney General are in fact unable to take timely, necessary action, consistent with the specific, concrete requirements of Title IV-D in such cases as plaintiff Laustaunau presents, due to staff shortages and excessive individual caseloads.

74. Plaintiff Laustaunau has not received support payments for any of the last seven months, nor has DCSE initiated action to enforce her former husband's current obligation or recover arrearages, as Title IV-D and its implementing regulations require in cases lacking any resolution over such an extended period.

IV DEFENDANT

75. Defendant Charles E. Cowan is the Director of the Arizona Department of Economic Security ("DES").

76. As Director, defendant Cowan is ultimately responsible for administration of the Division of Child Support Enforcement ("DCSE"), now an organizational entity within DES.

77. Plaintiffs sue defendant Cowan in his official capacity, for the declaratory and injunctive relief requested hereafter.

V CLASS ACTION

78. Plaintiffs bring this action on behalf of themselves, their own minor children in their custody and a class comprised of the following persons: All custodial parents of minor children and such children, resident in Arizona, who are entitled or become entitled to receive, from or through DCSE, services designed to establish the paternity of minors; locate parents legally responsible for support of their offspring; fix the terms of such obligations; obtain corresponding orders of support from competent courts; enforce those orders, through further judicial proceedings, collection activities or additional means; and otherwise execute related mandates of Title IV-D imposed, by Congress, for the ultimate, intended benefit of qualifying minors and their custodial parents.

79. The proposed class satisfies the express and implied requirements of Rule 23(a):

a) The membership reflects the detailed prescriptions of Title IV-D and, at any given time, is reasonably determinable from data available to DCSE staff.

b) The named representatives and their children qualify for and either have sought or automatically been due one or more of the Title IV-D services mentioned in the class definition, but have not been furnished them in accordance with controlling provisions of federal law.

c) According to contemporary State publications, DCSE is responsible for approximately 275,000, child support enforcement cases alone.

d) The proposed class as, therefore, more than sufficiently numerous to preclude joinder of its individual members, which would prove not merely impracticable but impossible.

e) There are issues of law and fact common to the class, as shown by the averments of paragraphs 80-147 and 149-159, which plaintiffs incorporate herein.

f) The claims of the proposed representatives are typical of those urged on behalf of the class, as similarly demonstrated by the allegations of paragraphs 4-77, 80-147 and 149-159.

g) The named plaintiffs will adequately represent absent class members: The representatives' counsel is well-versed in the subject matter of the present litigation and has demonstrated ability to conduct properly class actions such as the one proposed here.

ii) The proposed representatives have no interests antagonistic to those of absentees, on whose behalf they seek essentially the same remedial orders that they request individually, based upon uniformly applicable theories of relief.

h) Class certification is otherwise proper pursuant to Fed. Rules of Civ. Pro., Rule 23(b)(2): as the averments of paragraphs 80-147 sufficiently establish, this is an instance in which the opposing party, in his oversight and general administration of a public agency entrusted with the same legal interests of all absentees,

has acted and failed to act on grounds necessarily applicable to the entire membership, thereby making declaratory and injunctive relief appropriate with respect to the class as a whole.

VI PRINCIPAL ALLEGATIONS

A. Legal and Administrative Structure of the Title IV-D Program

80. Like all other states, Arizona has elected to and does maintain a basic program of Aid to Families with Dependent Children ("AFDC"), subject to Title IV-A of the Social Security Act, 42 U.S.C. §601 *et. seq.*

81. AFDC is a form of cooperative federalism that seeks to provide for the subsistence needs of dependent children impoverished by loss of parental support, due to divorce and desertion (among other causes). *See* 42 U.S.C. §601.

82. Title IV-A requires that participating states establish and operate an adequate "child support program", pursuant to a plan approved by the Secretary of Health and Human Services ("HHS") acting in conformity with Title IV-D of the Act. *See* 42 U.S.C. §602(a)(27).

83. Title IV-A provides for periodic review, by HHS specialists, of each state's Title IV-D program and specifies sanctions the Secretary may impose if its operation is then found not to comply substantially with requirements detailed in 42 U.S.C. §651 *et. seq.*, as well as implementing regulations at 45 C.F.R. Part 305. See, generally, 42 U.S.C. §602(h).

84. Reduction of federal financial assistance under Title IV-A constitutes the basic penalty the Secretary must order, unless the state timely submits a corrective action plan ("CAP") deemed, by HHS, sufficient – if satisfactorily implemented – to remedy cited deficiencies in Title IV-D program operations.

85. The statute does not afford the Secretary another distinct remedy, either on behalf of the federal government or intended beneficiaries of the child support program, should state Title IV-D operations violate or continue to violate controlling federal standards.

86. The aforementioned HHS reviews of Title IV-D programs are conducted in accordance with highly detailed, specific and concrete prescriptions in 45 C.F.R. Part 305, constituting "such standards for State programs for locating absent parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the absent parent's child is living" as the Secretary has "determine[d] [are] necessary to assure that such programs will be effective." *See* 42 U.S.C. §652(a).

87. Those governing rules prescribe the percentage of cases, requiring particular forms of action, that must be processed within specified time periods, and otherwise set forth, in both quantitative and qualitative terms, the activities regularly demanded of state Title IV-D programs.

88. The statutory and regulatory design consistently provides that all principal, mandated functions must be

performed for the ultimate benefit and in the best interests of dependent children, as well as their custodial parents – including, among others:

a) determination and establishment of paternity, as a condition precedent to recovery of support for minor children;

b) location of non-custodial parents and investigation of their employment as well as other financial circumstances, in furtherance of child support enforcement and collection efforts;

c) maintenance, as necessary, of proceedings in which valid orders may issue adjudicating child support obligations, the amount(s) thereof and other terms of compliance;

d) maintenance, as necessary, of proceedings to enforce outstanding support orders that have not been obeyed, either in whole or in part;

e) collection activities, authorized by federal or state law, pursuant to valid orders of support;

f) accounting for recoveries from absent parents, regularly notifying custodial parents accordingly and timely disbursing the sums, collected by the Title IV-D program, due such parents for their children's support;

g) publication of the availability of Title IV-D services and the procedures for requesting them at designated places and times.

89. The federal statute requires that the state provide these and other mandated services throughout its

territory, without creating or sanctioning unreasonable local barriers to access by eligible persons.

90. Title IV of the Social Security Act provides that all custodial parents and children in AFDC benefit status shall receive the foregoing services, as necessary, and that those parents must cooperate in efforts to provide them or risk loss of monthly cash assistance.

91. The law contemplates that states will retain a portion of the support recovered by its Title IV-D agency in AFDC-linked cases.

92. It further provides, however, that in the event support payments are thus recovered in an "AFDC" case, the state agency must timely disburse at least a fixed, per-month amount thereof to the custodial parent, and shall "pass through" greater sums if arrearages are collected as set forth in Title IV-D and its implementing regulations.

93. Custodial parents and their children are, of course, not expected to remain on the AFDC rolls for protracted periods and, in the State of Arizona as elsewhere, a majority in fact do not retain uninterrupted benefit status over more than comparatively short intervals, of less than a year's duration on average.

94. Consequently, such Title IV-D services as establishment of paternity and child support orders redound to the substantial benefit of minor children, as well as their custodial parents, long after AFDC payments to them cease and, indeed, may spell the difference between continued self-maintenance and return to the welfare rolls.

95. Federal law also provides that custodial parents and minor children ineligible for AFDC are nonetheless entitled to receive necessary Title IV-D services when properly requested.

96. The state agency must timely disburse to them all support it thus collects on their behalves, although it may levy reasonable charges for services rendered non-AFDC recipients of Title IV-D services.

97. In these cases as well, adequate provision of core services not only confers lasting benefits, of considerable value, on non-AFDC families, but may well ensure that such single-parent households need not resort to AFDC itself.

98. Under Title IV-D, the responsible state agency can earn federal financial credits through collection of support for members of resident AFDC households, but will not derive the same benefit from similar work on behalf of non-AFDC parents and children nonetheless due Title IV-D services.

99. This distinction may operate as a disincentive to provision of services sought by non-AFDC mothers and, plaintiffs allege on information and belief, has contributed somewhat to corresponding deficiencies in the DCSE program, catalogued hereafter.

100. Similarly, if – for example – DCSE locates and obtains support from an Arizona inhabitant who is also a parent absent from a resident California household, it does not receive the aforementioned kind of credit – nor would DCSE's California counterpart in the reverse circumstances.

101. This hiatus in the overarching federal design tends to discourage interstate cooperation, especially on the part of a Title IV-D agency already lacking the capacity to handle the remainder of its caseload satisfactorily.

102. Such a pattern and practice may be met with a reciprocal lack of cooperation on the part of a neighboring Title IV-D agency, so that – in a now-relevant illustration of the problem – the California counterpart to DCSE may become (and, in fact, has become) reluctant to assist DCSE in cases involving parents of resident Arizona children long absent from their offsprings' households and evidently settled in California.

103. The foregoing problem is not merely a product of structural financial disincentives, but of DCSE's pronounced inability to aid neighboring jurisdictions, which have shown themselves increasingly disinclined to help DCSE in pursuing or proceeding against Arizona absentees within their territory.

104. A state Title IV-D agency may enter into contracts with local governments for provision by them of certain federally mandated services.

105. In that event, the state agency retains ultimate responsibility, under federal law, for compliance with all Title IV-D requirements, including those subject to contractual arrangements and those the State continues to manage on its own.

106. The state Title IV-D agency must require corrective action on the part of such contractors, in the event their performance of delegated tasks does not substantially comply with federal standards, and terminate

underlying agreements, if sufficient improvement is not achieved and maintained.

107. Units of local government are not obligated by federal law to enter into Title IV-D service contracts, and remain free to withdraw from any such arrangement.

108. HHS regularly prepares reports to Congress containing quantitative summaries, comparisons and general discussion of the performance of all Title IV-D agencies, including in the aggregated data the contributions of any local government contractors.

B. Structure, Operation and Performance of the Title IV-D Program in Arizona

109. DCSE or its predecessor has remained the designated Title IV-D agency for the State of Arizona since amendments to the Social Security Act, directing establishment and maintenance of the expanded child support program DCSE administers.

110. DCSE maintains contractual or similar arrangements with the Office of the Attorney General, whereby its legal staff provide or assist in the provision of certain services required by Title IV-D, for which DCSE ultimately remains responsible, under federal law.

111. From time to time, DCSE has entered into and maintained contracts with a number of Arizona counties, in which the latter have agreed to perform designated Title IV-D functions on behalf of custodial parents and their children resident in those jurisdictions.

112. DCSE has retained direct responsibility for other mandated, Title IV-D operations that counties declined to undertake when contracting with the state agency or could not reasonably be expected to perform.

113. DCSE has also remained a direct provider of Title IV-D services in those counties that have not entered into or maintained contracts of the aforementioned kind.

114. In addition, DCSE has generally maintained contractual arrangements with at least several clerks of the Superior Court, whereby the clerks manage, *inter alia*, accounting and disbursement of child support collections.

115. During the early part of the last decade, HHS specialists audited DCSE's performance of discrete functions or operations required by Title IV-D and the corresponding state plan.

116. These HHS performance reviews cited technical deficiencies requiring specified improvements, but generally did not inquire into DCSE's handling of such core responsibilities as determination and enforcement of child support obligations.

117. In the 1984-1985 federal fiscal year, HHS staff did conduct a comprehensive examination of core programmatic functions, as then performed by both DCSE and a number of counties under contract with the state agency.

118. The 1984 HHS audit revealed substantial noncompliance with federal requirements governing such operations as establishment of paternity, location of absent parents, pursuit of support orders, enforcement of adjudicated support obligations and collection action.

119. HHS determined that DCSE and its county contractors should be given an opportunity to prepare corrective action plans sufficient – if satisfactorily executed – to remedy substantial deficiencies in virtually all functions and activities central to the Title IV-D program.

120. In 1985, DCSE and those counties did develop a CAP in which they acknowledged decisive shortcomings in their Title IV-D operations and proposed reforms that would be instituted, in phases, over the next three to four years.

121. HHS accepted the 1985 CAP, in lieu of immediate imposition of sanctions otherwise required by federal law, and further agreed that HHS specialists would not audit programmatic functions subject to the CAP, pending its full implementation on the schedule set forth therein.

122. During the next several years allowed for complete institution of CAP requirements, HHS did not audit Arizona's provision of primary Title IV-D services subject to those reform efforts, but confined its performance reviews to technical support functions and activities.

123. Those limited examinations generally revealed non-compliance with some federal requirements applicable to the comparatively few, discrete operations then under scrutiny.

124. Several years have lapsed since the agreed deadline for full implementation of the 1985 CAP, to which DCSE committed itself in a forthright attempt at

not only avoiding HHS sanctions, but rectifying acknowledged, basic deficiencies in nearly all integral parts of the Title IV-D program.

125. HHS staff did not formally scrutinize implementation of the 1985 CAP while it was ostensibly underway, nor have they audited the extent, substance, quality or sufficiency of the Plan's execution at any time after the deadline, which has long since passed, for its complete institution.

126. Furthermore, HHS has not subsequently reviewed performance of the core functions and activities that were the subject of the 1985 CAP, to determine whether or not the state's Title IV-D program substantially complies with federal law and regulations, apart from past efforts – if any – to execute provisions of the 1985 Plan.

127. In a resolution adopted on December 13, 1991, the state's Joint Legislative Oversight Committee called for a report by the Auditor General on the overall operation of DCSE.

128. With the cooperation and assistance of DCSE personnel, professional staff in the Office of the Auditor general conducted a performance audit of DCSE operations the following year.

129. In December of 1992, the Auditor General released a report on the results, simply entitled "Performance Audit – Department of Economic Security Child Support Enforcement" (No. 92-7 December, 1992) (hereafter "the December, 1992 Report,"), a copy of which is

attached hereto and by this reference, incorporated herein.

130. The December, 1992 Report is introduced by a letter, dated December 15, 1992, from Auditor General Douglas K. Norton to Members of the Arizona Legislature, the Governor and defendant Cowan.

131. In it, the Auditor General summarizes the ultimate findings of his 1992 performance audit as follows:

a) "We found the Child Support Enforcement program is barely functioning; only 3 percent of the more than 275,000 cases handled through the program are receiving regular support payments."

b) "Unless significant changes are made, literally hundreds of millions of dollars will continue to go uncollected and hundreds of thousands of Arizona parents and children will suffer the consequences."

132. The December, 1992 Report identified systemic failures to comply with Title IV-D standards, apparent throughout DCSE operations of paramount interest to plaintiffs and the proposed class, and analyzed the principal causes, thusly:

a) Less than a decade ago, all counties contracted with the State, to perform "most" Title IV-D functions in cases involving their residents.

b) By 1986, nine of Arizona's fifteen counties had terminated their contractual participation in the Title IV-D program, leaving DCSE with direct responsibility for thousands of new, diverse cases in various stages of development. (Nineteen eighty-six was also the first, full

year for implementation of the 1985 CAP, which contemplated undertakings by counties – not just DCSE – that instead withdrew altogether from participation in the program.)

c) In 1988, Maricopa County abruptly determined that its departments and divisions would no longer handle any of the title IV-D operations for which it had contracted.

d) Termination of this agreement alone required that DCSE, with little advance notice and no opportunity for preparation, assume direct responsibility over two-thirds of all Title IV-D cases in Arizona, including 35,000 non-AFDC cases added to 60,000 AFDC cases on which the state agency was already performing work for Maricopa County. (Nineteen eight-eight was the last, full year for institution of 1985 CAP reforms, effectively thwarted by DCSE's sudden and unexpected receipt of Maricopa County's uniquely large caseload).

e) DCSE was wholly unequipped, in terms of both staffing and funding, to absorb and then properly manage unprecedented surges in its own caseload, resulting from termination by most counties of their Title IV-D contracts.

f) Those contract terminations not only cost the Title IV-D program considerable funding, in the form of substantial contributions from counties underwriting their participation in it, but became another cause of the program's failure to generate offsetting, federal "incentive revenues".

g) Such incentive revenues are payable to states that achieve sufficiently favorable ratios between sums collected in child support and costs of processing Title IV-D cases.

h) In recent times, DCSE has posted collection (benefit)/cost ratios significantly below the annual national average and, in fact, has not generated sufficient federal "incentive revenues," combined with retainable amounts of support collected in AFDC cases, to offset the state's federally determined share of Title IV-D administrative expenses.

i) Since 1988, DCSE has remained responsible for all Title IV-D cases arising in ten of Arizona's fifteen counties, including Maricopa with over half the total, and for certain mandated functions on which the remaining counties depend, to provide services entrusted to them by contract.

j) Approximately one-half of the 275,000 cases assigned DCSE require extensive development, starting with such threshold tasks as identification and location of absent parents, before actual collection of child support will become a realistic possibility.

k) DCSE cases, however, are so severely backlogged that months frequently elapse before any action, preliminary or otherwise, is taken in more than a small portion, during any given thirty-day interval. (This pattern and practice amounts to longstanding, endemic noncompliance with most, if not all, federal case-processing deadlines and related requirements applicable to core Title IV-D functions.)

l) As of October, 1992, substantive progress had not occurred in 65,220 DCSE cases because absent parents had not been found – and, frequently, had not been the subject of any DCSE-initiated search.

m) By October of last year, over 94,000 DCSE cases required action, of one kind or another, to establish or further establishment of paternity, so that support orders could at least be sought; this cohort comprised the single largest component of the total backlog of cases.

n) Paternity-function cases then encountered lengthy delays between intake and final disposition, with much of the intervening period marked by a complete lack of activity. (The *status quo* a scant three months ago persists in substantially the same form, and represents a protracted, pervasive failure by DCSE to meet most, if not all, federal requirements determining acceptable performance of mandated paternity functions.)

o) In general, whatever the prescribed function or task at hand, fewer than ten percent of all active DCSE cases have received attention in recent, representative months, and in one-third of those, agency action was ministerial or *pro forma* in nature, rather than intended to overcome a substantive impediment to eventual collection of support.

p) In a recent, still-representative month, support was not collected in two-thirds of the cases where legally due and owing (because all conditions precedent – paternity determinations, location of the absent parents, etc. – had finally been satisfied by DCSE); during the first five months of 1992, support was not collected in over half of *all* such cases.

q) Arrearages in those and other DCSE cases processed up to enforceable payment orders total several hundred million dollars, of which $100 million is due the state for AFDC payments to children and custodial parents who never received the support legally due them.

r) For reasons noted in this and other paragraphs of plaintiffs' Complaint, the caseloads of DCSE staff are more than triple a cases-per-worker ratio deemed unacceptably high by experts in the field – a phenomenon that generates overwhelming backlogs, as thousands of new cases are added each month; guarantees protracted inaction in a majority (including those requiring completion of numerous tasks, if any useful service is to be provided); and promotes an approach to workloads whereby only the custodial parents who " 'scream the loudest receive attention.' "

s) An estimated 75 to 80 percent of all DCSE cases remain backlogged and would require, in and of themselves, years of effort to clear.

t) If hiring of all additional caseworkers now envisaged by DCSE occurs as the administration proposes, the state's Title IV-D agency will be left with a cases-per-worker ratio of more than double the figure for the Alabama program, which has been declared seriously understaffed. (While the auditor General has recommended certain, potentially helpful changes in DCSE technology, administrative methods and the legal authority available to it under state law, none of these, singly or in combination, can offset persistent, extraordinary personnel shortages constituting the paramount cause of non-compliance with federal Title IV-D requirements.)

133. DCSE effectively lacks the authority to direct the Title IV-D work of legal staff in the Attorney General's Office, which contributes to fragmentation of programmatic efforts and, thus, impedes compliance with federal law.

134. Similarly, in attempting to bring on line a new automated system for the Title IV-D program, DCSE staff encountered lengthy delays and difficulties arising from innumerable, material errors in case file entries prepared by clerks of the Superior Court, or by county staff responsible for them, before the aforementioned contract terminations.

135. To the extent such practices persist among court clerks determined to handle certain collection and disbursement functions mandated by federal law, DCSE's ability to discharge its related responsibilities will be impaired and numerous members of the plaintiff class will not receive, either timely or at all, the full amount of support payments lost in the clerks' offices.

136. At the time of the performance audit described in the December, 1992 Report, Arizona's Title IV-D program held the lowest ranking among the fifty states, in terms of its collection results, with support regularly recovered in fewer than 3% of all cases in the DCSE system.

137. On information and belief, plaintiffs allege that certain remedial measures proposed by the Auditor General and under consideration by defendant's subordinates (with his knowledge) would violate provisions of Title IV-D or corresponding federal regulations, if implemented,

and, in particular, if instituted for the sole or primary purpose of "triaging" and thus reducing case backlogs.

138. As the December, 1992 Report acknowledges, DCSE has not met federal requirements that it maintain outreach programs which adequately inform non-AFDC parents of the principal Title IV-D services available to them and ways of obtaining them in their communities.

139. Under present circumstances, such mandated undertakings would not further the purposes of federal law, since DCSE could not accept and properly handle additional cases generated through effective outreach efforts.

140. DES prepared a formal response to the 1992 performance Audit by the Auditor General, which appears at the end of the December, 1992 Report, following a cover letter dated December 10, 1992, from defendant Cowan to Mr. Norton.

141. In that correspondence introducing the formal agency (DES) response to the 1992 Performance Audit, defendant Cowan states:

> "DES agrees with the findings and recommendations in the [December, 1992] [R]eport."

142. The text following defendant Cowan's letter does not contain assertions or allegations contradicting or disputing the principal findings and conclusions of the December, 1992 Report.

143. Consequently (and on further information as well as belief), plaintiffs allege that acting at the ultimate direction and with the knowledge of defendant Cowan,

DCSE staff have *inter alia* – regularly and consistently failed to:

a) establish a system for and carry out periodic reviews of low priority or inactive cases at least annually or on receipt of new information, as required by 45 C.F.R. §303.10(B)(6);

b) use all appropriate parent locator resources (including the Federal Parent Locate Service) within seventy-five calendar days of determining that location of an absent parent is necessary, as required by 45 C.F.R. §303(b)3;

c) immediately repeat attempts to locate absent parents whenever new information becomes available and to repeat location attempts at least quarterly, even if no new information is available, as required by 45 C.F.R. §303.3(B)(5);

d) to file actions for paternity determinations or complete service of process to establish paternity within ninety days of locating putative fathers, as required by 45 C.F.R. §303.5(a)(1);

e) prepare and submit to federal as well as state revenue departments all DCSE cases appropriate for state and/or federal income tax intercepts, as required by 45 C.F.R. §303.6(c)(3);

f) refer interstate child support enforcement cases to the responding state's central registry within twenty days of determining that the absent parents are in such other states, as required by 45 C.F.R. §303.7(b)(2), effective October 1, 1990;

g) utilize all appropriate state and local sources, within sixty days of the referral or application of certain custodial parents, to determine the whereabouts of absent parents, as required by 45 C.F.R. §303.3(D);

h) maintain effective programs for timely establishing paternity and support obligations, as required by 45 C.F.R. §§303.4 and 303.5;

i) maintain programs for adequately reviewing whether child support obligations are set in appropriate amounts and for seeking modifications of support obligations, as required by C.F.R. §303.4(C);

j) take appropriate action pursuant to state law to enforce child support obligations that have become delinquent, as required by 45 C.F.R. §§305.26 and 303.6;

k) maintain sufficient staff, including attorneys, to adequately represent CSEA in court with respect to the establishment and enforcement of support orders, and to provide an effective program of child support services, as required by 45 C.F.R. §303.20(F).

144. Five counties still maintain Title IV-D contracts with the State.

145. Those agreements principally provide that the Office of the County Attorney will furnish specified Title IV-D services in both AFDC-linked and non-AFDC cases presented by custodial parents and their minor children residing in each such county.

146. In performing those tasks, county representatives are dependent on DCSE for such support and assistance as location of absent parents living outside Arizona and pursuit of enforcement or collection proceedings

against them, which requires the assistance of the Title IV-D agency in their state of residence insofar as DCSE can secure it, pursuant to interstate agreements or working arrangements.

147. Custodial parents and children served by county agencies therefore encounter many of the same delays and difficulties in receiving effective, mandated services, provided in conformity with Title IV-D and its implementing regulations, as do their counterparts for whom DCSE is the sole, direct provider of all such services.

VII CLAIM FOR RELIEF

148. Plaintiffs hereby incorporate and reallege, as though fully set forth herein, the allegations of paragraphs 4-147.

149. So long as it maintains an AFDC program, the state of Arizona must operate a child support enforcement program, as mandated by Title IV-A and IV-D of the Social Security Act.

150. Both the state plan for a child support enforcement program and its actual operation must comply with the requirements of Title IV-D and federal regulations formally implementing 42 U.S.C. §651 *et. seq.*

151. The statute and its implementing regulations specify, in considerable, concrete detail, the services that a state program must furnish and the performance standards they must satisfy.

152. Federal law further provides that the intended, ultimate beneficiaries of these mandated, closely regulated activities are custodial parents and their minor children, who have been deprived of the support legally owned them by absent parents.

153. The federal statutory and regulatory scheme thus obligates the state Title IV-D agency to provide specified services in prescribed fashion, even as their intended beneficiaries are entitled to such performances while enrolled in the program.

154. Congress has not affirmatively foreclosed enforcement by program beneficiaries of the corollary, individual rights thereby vested in them, which form the proper subject of an action authorized by 42 U.S.C. §1983:

a) Title IV-D omits any express or implied provision for alternative means of enforcement by program beneficiaries.

b) The enforcement authority granted HHS does not serve to foreclose resort by program beneficiaries to §1983 remedies, in that

i) they cannot require HHS to exercise it on their behalves, for any purpose; and

ii) if HHS does determine state violations of Title IV-D or its implementing regulations, the sole, substantive remedy open to it is a reduction in federal funding for AFDC benefit payments, a sanction that may redound to the detriment of many Title IV-D beneficiaries without at all ameliorating the plight of any denied legally sufficient support enforcement services.

155. Furthermore, as the history of Arizona's Title IV-D program aptly illustrates, HHS oversight otherwise culminates in preparation of corrective action plans that may not be implemented by the state nor monitored by the federal agency, thus serving only to create the appearance of reform without its substance.

156. As set forth in paragraphs 109-147, operation of the Arizona Title IV-D program does not now comply and, for the better of a decade, has not complied with detailed federal mandates on all core components, including identification and location of absent parents; establishment of paternity, as necessary; determination of support obligations; enforcement of corresponding judicial orders; and collection as well as disbursement of support.

157. Defendant Cowan has publicly and forthrightly admitted that the 1992 Performance Audit by the state Auditor General accurately sets forth substantial programmatic deficiencies and their primary causes – which constitute and perpetuate enduring, systemic violations of 42 U.S.C. §651 *et. seq.* as well as 45 C.F.R. Part 305.

158. The cognizable legal interests of plaintiffs and all other members of the proposed class are, of necessity, adversely affected by these institutional failures and shortcomings prohibited by federal law, which vests in them corollary, individual rights to all mandated services delivered in substantial compliance with Title IV-D and its implementing regulations.

159. Pursuant to 42 U.S.C. §1983, plaintiffs and the remainder of the class are, therefore, entitled to a declaratory judgment that DCSE operations violate the aforesaid,

substantive rights secured them by 42 U.S.C. §651 *et. seq.* and 45 C.F.R. Part 305 and to corresponding equitable relief.

WHEREFORE, plaintiffs respectfully request that this Court:

1. Assume jurisdiction over the subject matter of the instant action.

2. Certify the class proposed herein, pursuant to Fed. Rules of Civ. Pro., Rule 23(a) and (b)(2), the members consisting of the persons described in paragraph 78.

3. Enter a declaratory judgment determining that operation of the Arizona Title IV-D program violates controlling, substantive provisions of federal law creating rights in plaintiffs and the class enforceable through an action permitted by 42 U.S.C. §1983.

4. Grant permanent (and as necessary and appropriate, interlocutory) injunctions prohibiting continued adherence to the aforesaid pattern and practices and requiring affirmative measures sufficient to achieve as well as sustain substantial compliance with federal law, throughout all programmatic operations at issue.

5. Award plaintiffs their ordinary costs of suit and such extraordinary ones, including reasonable attorney's fees, as are authorized by 42 U.S.C. §1988.

6. Grant such other or further relief as the Court deems just and proper in the premises.

DATED this 22nd day of February, 1993.

By: /s/ William E. Morris
William E. Morris
Attorney for Plaintiffs